



**IN THE EAST AFRICAN COURT OF JUSTICE
AT BUJUMBURA**

APPELLATE DIVISION

(VIDEO CONFERENCE PROCEEDINGS)

**(CORAM: Nestor Kayobera JP, Geoffrey Kiryabwire VP, Sauda
Mjasiri, Aninta Mugeni, M'Inoti Kathurima JJA)**

APPEAL NO. 3 OF 2021

**THE ATTORNEY GENERAL OF THE
REPUBLIC OF KENYA APPELLANT**

VERSUS

KIOO LIMITED RESPONDENT

EX-TEMPORE RULING

It has been brought to the notice of this Court by a letter to the Registrar of the East African Court of Justice received on the 8th November 2021. That this appeal has been overtaken by events by reason of the passing into law the Finance Act 2021. In that law it provided that glass bottles imported from any countries within East African Community will no longer have to pay a differential tax which is the subject of this appeal.

By that letter, it was then suggested to the Court that the matter has become moot, or in other words, overtaken by events. The Attorney General of Kenya has agreed that indeed this matter has been overtaken by events. So, by consent of the parties, it is now clear that the matter has been overtaken by events. The only outstanding issue therefore remains the issue of costs.

The Respondent has pleaded to this Court that they should be entitled to costs largely because of the conduct of the Attorney General of Kenya and also that this matter is not one of public interest. The Attorney General of Kenya has submitted to this Court that in the interest of justice, each party bears its own costs.



The position as to costs is well settled in the Rules of this Court and Rule 127(1) of the Rules of this Court provides that costs in any proceeding shall follow the event unless the Court shall for good reasons otherwise order. It is the Ruling of this Court that since the parties have resolved their dispute

before the matter came up for hearing and there is evidence that at the time the Attorney General of Kenya filed their submissions, the new law had not yet come into force, it is reasonable, just and equitable that each party should bear their own costs.

The only caution that we would give is that in future the parties should strive to, in such circumstances, invoke Rule 105 of the Rules of this Court which will save Court time and expenses. So, we find given this position, that this appeal stands struck out and each party to bear their own costs.


We so Order.

Signed and dated in Bujumbura Burundi on thisday of November 2021.



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Nestor Kayobera
PRESIDENT
.....
Geoffrey Kiryabwire
VICE PRESIDENT



Suda Mjasiri
JUSTICE OF APPEAL



Anita Mugeni
JUSTICE OF APPEAL



M'Inoti Kathurima
JUSTICE OF APPEAL